



A-475-818
Changed Circumstances Review
Public Version
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DATE: June 10, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Results of Changed Circumstances Review Regarding
Successor-In-Interest Analysis: Certain Pasta from Italy

I. Summary

In response to a request from La Molisana S.p.A (La Molisana), a producer/exporter of certain pasta (pasta) from Italy, we initiated a changed circumstances review on August 12, 2014.¹ Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3)(ii), the Department of Commerce (the Department) is issuing this notice of preliminary results of changed circumstances review. We preliminarily determine that La Molisana is not the successor-in-interest to La Molisana Industrie Alimentari, S.p.A (LMI).

II. Background

On June 23, 2014, La Molisana requested that the Department conduct a changed circumstances review to show that because of a change in ownership, it was the successor-in-interest to LMI.²

La Molisana stated that in 2004 LMI entered into a bankruptcy proceeding, but continued to operate and produce, sell, and export pasta. In 2011, the Ferro Family Group acquired LMI's factory including the employees and selling accounts, and placed the pasta operations in a new legal entity which is now named La Molisana.

¹ See *Certain Pasta from Italy: Initiation of Changed Circumstances Review*, 79 FR 47090 (August 12, 2014) (*Initiation Notice*).

² See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996).



III. Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are certified by a European Union (EU) authorized body and accompanied by a National Organic Program import certificate for organic products.³ Effective July 1, 2008, gluten free pasta is also excluded from this order.⁴

The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

IV. Discussion of Methodology

In making a successor-in-interest determination, the Department examines several factors, including, but not limited to, changes in the following: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.⁵ While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally the Department will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.⁶ Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the

³ On October 10, 2012, the Department revised the "Scope of the Order" to recognize the EU-authorized Italian agents for purposes of the antidumping and countervailing duty orders on pasta from Italy. See Memorandum from Yasmin Nair to Susan Kuhbach, titled "Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy," dated October 10, 2012, which is on file in the Department's Central Records Unit.

⁴ See *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

⁵ See, e.g., *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010); *Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 79 FR 28481 (May 16, 2014), unchanged in *Certain Pasta From Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 79 FR 56339 (September 19, 2014) (*Delverde*); and *Certain Lined Paper Products From India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 79 FR 40709 (July 14, 2014), unchanged in *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 80 FR 18373 (April 6, 2015) (*CLPP*).

⁶ See, e.g., *Delverde* and *CLPP*. See Also *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999).

predecessor company, the Department may assign the new company the cash-deposit rate of its predecessor.

V. Analysis

In conducting a successor-in-interest analysis, while we generally consider information from immediately before and after the formation of a new entity, the Department considers all information on the record relevant to the determination.⁷ In the instant case, a review of the bankruptcy documents indicate that LMI remained operational during its bankruptcy, and that the assets, including the complex and real estate, all other assets, credits, rights and shares, as well as cash were transferred to the company proposing the bankruptcy agreement, Semolerie Molisane S.r.l., except for a residual amount that was payable for taxes owed by LMI.⁸ In 2011, Semolerie Molisane S.r.l., a dormant company was transformed into an active company, assumed the name La Molisana, changed its business structure from a limited liability company to a share company, and broadened its corporate purpose.⁹ Semolerie Molisane S.r.l. is owned by Fratelli Ferro - Semolerie Molisane S.r.l., a Ferro family owned-company, and Autotrasporti Commerci Manutenzione e Assistenza - SACMA S.r.l., partially owned by the Ferro family.¹⁰ Below, we analyze each of the four CCR criteria.

(1) Management

There were significant changes in LMI's management structure after the 2011 change in ownership, including: the establishment of a [

] ¹¹

With respect to management positions, [] of the [] managerial positions in []. The domestic sales operations was [] at LMI to []

⁷ See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results and Termination, in part, of the Antidumping Duty Changed Circumstance Review*, 76 FR 64898 (October 19, 2011).

⁸ See La Molisana's Supplemental Changed Circumstance Review Questionnaire Response (SCCR) at Exhibit CCRS-6 at 43 and 93, dated January 28, 2015.

⁹ See SCCR dated January 9, 2015 at 6; and SCCR at Exhibit CCRS-3 at 11 – 18, dated January 28, 2015. See also La Molisana's Second Supplemental Changed Circumstance Review Questionnaire Response (SSCCR) at 3 – 4, and Exhibit CCRSS-2, dated March 24, 2015.

¹⁰ See SCCR at Exhibit CCRS-3 at 13 - 14 and SSSCCR at 3 – 4.

¹¹ *Id.*, at Exhibit CCRS-1.

external sales, the new ownership added [redacted]. For [redacted].¹² Thus, the [redacted] in the post-acquisition entity. The changes in La Molisana’s business structure and management fundamentally altered the operations of LMI.

(2) Production Facilities

La Molisana contends that the only change it made to the production lines since its inception was an upgrade to the operating software line for short pasta.¹³ However, the “list of investments” provided by La Molisana in its submissions indicates that since the purchase of LMI’s assets, La Molisana has invested significantly in other aspects of production [redacted]

[redacted]¹⁴
The information from La Molisana indicates that the primary pasta making and packaging equipment remained, but was upgraded and improved, and new software was installed.¹⁵ We preliminarily determine that these changes in the production facilities are significant, in terms of the invested amount, and the improved technology that would make the factory more efficient.

(3) Supplier Relationships

Information on the record indicates that in 2010, F. Ili Ferro Semolerie Molisane Srl, the [redacted] of semolina, the major input used in pasta production, was unaffiliated with LMI.¹⁶ Although the [redacted] the supplier became a shareholder in La Molisana in 2011, and thus, is now affiliated with La Molisana. As a result of the change in ownership, La Molisana became vertically integrated in the Ferro Family Group, which is a significantly different relationship between the formerly two independent food producers prior to the change in ownership. Though La Molisana’s [redacted], the unaffiliated supplier became affiliated with La Molisana, thereby transforming La Molisana into a vertically integrated pasta producer. We find this arrangement between La Molisana and its semolina supplier constitutes a significant change compared to the supplier relationship maintained by LMI.

Further, the number of packing and pallets suppliers [redacted].¹⁷ The number of transportation suppliers [redacted].¹⁸

¹² See SCCR at Exhibit CCRS-1.

¹³ *Id.*, at 8- 9.

¹⁴ *Id.*, at Exhibit CCRS-8.

¹⁵ *Id.*, at 9.

¹⁶ *Id.*, at CCRS-9(a). See also SCCR at 4.

¹⁷ *Id.*, at CCRS-9(b).

¹⁸ *Id.*, at CCRS-9.

(4) Customer Base

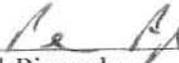
We preliminarily determine that there were changes in domestic and export customers and the value of goods exported to foreign countries from LMI and La Molisana. In the domestic market, the number of []

[]¹⁹ Export customers [] In 2010, [] In 2012, []

[]²⁰

Recommendation: When we consider the above four factors, we find that the primary changes were a change in ownership and a replacement of corporate management, significant changes to supplier relationships, and changes in the production facilities. We also find that there was a change with regard to the customer base. Based on the totality of the evidence on the record, we recommend preliminarily determining that La Molisana is not the successor-in-interest to LMI.²¹

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

10 JUNE 2015
Date

¹⁹ *Id.*, at CCRS-11.

²⁰ *Id.*

²¹ See *Delverde*. See also *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber From Japan*, 69 FR 61796 (October 21, 2004), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 67890 (November 22, 2004).